IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4469 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUDHABEN W/O DHIRUBHAI RANCHHODBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4469 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S.PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985

('the Act' for short), Commissioner of Police, Surat City, Surat , vide order dated March 14, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a Bootlegger within the meaning of Section 2(b) of the Act as nine cases under the Prohibition Act are registered against the petitioner which are pending trial and statements of two anonymous witnesses are recorded and therefore, according to the detaining authority her activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting her at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Ms. Subhadra Patel, learned advocate for the petitioner has restricted her arguments to the effect that there is a delay in passing the order of detention without recording satisfactory explanation on the part of the detaining authority and, therefore, order of detention is vitiated. According to her, the last offence against the petitioner was registered on January 3, 2001 whereas the order of detention came to be passed on March 14, 2001. Therefore, there is a delay of two months and eleven days in passing the detention order and therefore, on account of delay which is unexplained by the detaining authority, the detention order is vitiated and she urged that the petition may be allowed by quashing and setting the impugned order of detention and setting the petitioner at liberty forthwith.

5. Mr S.S.Patel, learned AGP has appeared on behalf of the respondent and has opposed the petition by making oral submissions. He, however, does not dispute the factual aspect with respect to the date on which the last offence was registered against the petitioner and passing of the detention order. He, therefore, urged to pass appropriate order in light of the latest pronouncement of the Supreme Court in this regard.

6. I have considered the submissions advanced by the

learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

7. On having perusal of the impugned order it is seen that there are nine cases registered against the petitioner for commission of the offences under Prohibition Act. The last offence came to be registered on January 3, 2001 whereas impugned order came to be passed on March 14, 2001 and, therefore, there is a delay of two months and eleven days in passing the detention order which is unexplained by the detaining authority.

8. In the case of ANAND PRAKASH V. STATE OF UP, AIR 1990 SC 516, it has been observed by the Supreme Court that if no satisfactory explanation for delay in passing the order of detention is given, the detention is vitiated.

9. A similar view is also expressed by this Court in ELESH NANDUBHAI PATEL V. COMMISSIONER OF POLICE, AHMEDABAD CITY, 1997 (1) GLH 381. Applying the principles enunciated by the Supreme Court and this Court in the aforesaid two judgements to the facts of the present case, the last offence which was registered against the petitioner on January 3, 2000 for commission of offence under the Prohibition Act could not be a proximate cause and, therefore, unexplained delay makes the ground of detention not proximate and vitiates the order of detention itself. Therefore, on the ground of delay alone, the order of detention deserves to be quashed and set aside, and the petition deserves to be allowed.

10. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned order of detention dated March 14, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*